

**Business Coalition for Benefits Tax Equity**  
**Statement for the Record**  
**Health Reform in the 21<sup>st</sup> Century:**  
**Insurance Market Reforms**  
**Committee on Ways and Means**  
**Wednesday, April 22, 2009**

Mr. Chairman, in conjunction with the Committee's hearing on health reform, the 55 members of the Business Coalition for Benefits Tax Equity<sup>1</sup> submit these comments regarding current tax code inequities that deter some individuals from utilizing employer-provided health coverage and penalize others who do use such coverage. These inequities would be remedied by bipartisan legislation that Representative Jim McDermott will soon re-introduce: The Tax Equity for Health Plan Beneficiaries Act.<sup>2</sup> The legislation has a number of provisions that will help increase health insurance coverage.

In increasing numbers, employers across the United States have made the business decision to provide health benefits to the domestic partners of their employees. These employers have recognized that the provision of domestic partner health coverage is an essential component of a comprehensive benefits package. This coverage helps employers such as those in our coalition attract and retain qualified employees and provides employees with health security on an equitable basis.

Unfortunately, federal tax law has not kept pace with change in this area and employers that offer such benefits and the employees who receive them are taxed inequitably. Such inequities reduce the number of individuals who utilize employer-provided health coverage and thereby contribute to the problem of the uninsured.

Issues Under Current Law

Currently, the Internal Revenue Code ("Code") excludes from income the value of employer-provided insurance premiums and benefits received by employees for coverage of an employee's spouse and dependents, but does not extend this treatment to coverage of domestic partners or other persons who do not qualify

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<sup>1</sup> The Business Coalition for Benefits Tax Equity is a coalition of employers that supports eliminating the federal tax inequities that result when businesses voluntarily provide health care coverage to the domestic partners (and other non-spouse, non-dependent beneficiaries) of their employees. A list of the Coalition members is attached. Questions regarding this statement may be directed to James Delaplane, Davis & Harman LLP, 1455 Pennsylvania Avenue, N.W., Suite 1200, Washington, DC 20004, (202) 347-2230.

<sup>2</sup> This legislation was introduced by Representative McDermott in the prior Congress (H.R. 1820 in the 110<sup>th</sup> Congress) and was cosponsored by 119 Members of the House.

as a "dependent" (such as certain grown children living at home who are covered under a parent's plan or certain children who receive coverage through a parent's domestic partner). In addition, when calculating payroll tax liability, the value of non-spouse, non-dependent coverage is included in the employee's wages, thereby increasing both the employee's and employer's payroll tax obligations. An employee of median income level who receives employer-provided major medical coverage of average cost for himself and a domestic partner faces an annual tax bill of \$4,939 in income and payroll taxes, \$1,729 (or 54%) more than that paid by a similarly situated co-worker with spousal coverage. However, this employee has no additional income to meet this higher tax burden. These higher tax levels can lead employees to decline the domestic partner coverage altogether, contributing to the problem of the uninsured.

The current inequitable tax regime also places significant administrative burdens on employers. It requires employers to calculate the portion of their health care contribution attributable to a non-spouse, non-dependent beneficiary and to create and maintain a separate system for the income tax withholding and payroll tax obligations for employees using such coverage. These tax and administrative impediments have discouraged some businesses from offering domestic partner health benefits.

Employers such as those in our Coalition that offer domestic partner benefits want to end these tax inequities so that the benefits we provide cover more Americans and so that all our employees are treated equitably under the tax laws. Ending the tax inequities will also eliminate the need for what are often complex communications to employees about how the tax penalties operate. Moreover, ending the inequities will allow us to jettison the separate and burdensome administrative systems that we must currently establish to track the income tax withholding and payroll tax obligations for employees covering non-spouse, non-dependent beneficiaries.

#### The McDermott Legislation Provides a Solution

The Tax Equity for Health Plan Beneficiaries Act would end these and other current tax inequities with respect to employer-provided coverage for non-spouse, non-dependent beneficiaries, such as domestic partners. Specifically, the bill would make the following important changes:

1. The value of employer-provided health insurance for a domestic partner or other non-dependent, non-spouse beneficiary would be excludible from the income of the employee if such person is an eligible beneficiary under the employer plan. Employers would retain the current flexibility to establish their own criteria for demonstrating domestic partner status.

2. In a corresponding change, the cost of health coverage for domestic partners or other non-spouse, non-dependent beneficiaries of self-employed individuals would be deductible to the self-employed person. This is not permitted under current law despite the fact that spousal and dependent coverage is deductible.
3. The legislation would make clear that employees paying for health coverage on a pre-tax basis through a cafeteria plan would be able to do so with respect to coverage for a domestic partner or other non-spouse, non-dependent beneficiary.
4. Many employers, particularly in the collectively bargained context, use tax-exempt Voluntary Employees' Beneficiary Associations ("VEBAs") to provide health coverage. Today, VEBAs are prohibited from providing more than *de minimis* benefits to a domestic partner or other non-spouse, non-dependent beneficiary. The legislation would permit a VEBA to provide full benefits to non-spouse, non-dependent beneficiaries without endangering its tax-exempt status.
5. In contrast to current law, employees would be permitted to reimburse medical expenses of a domestic partner or other non-spouse, non-dependent beneficiary from a health reimbursement arrangement ("HRA"), health flexible spending arrangement ("Health FSA") or health savings account ("HSA").
6. The value of employer-provided health coverage for a domestic partner or other non-dependent, non-spouse beneficiary would be excluded from the employee's wages for purposes of determining the employee's and employer's FICA and FUTA payroll tax obligations.

We applaud the Committee for its review of health insurance coverage and market reforms and for giving us an opportunity to share our perspective on an important tax inequity affecting health benefits. We hope to work closely with the Committee to include the Tax Equity for Health Plan Beneficiaries Act in the broader health reform legislation the Committee is developing and to enact this important legislation at the earliest opportunity.

# **BUSINESS COALITION FOR BENEFITS TAX EQUITY**

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